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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

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## **Decision**

**Matter of:** Cybermedia Technologies, Inc.

**File:** B-405511.3

**Date:** September 22, 2011

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William W. Goodrich, Jr., Esq., Judith B. Kassel, Esq., and Patrick R. Quigley, Esq., Arent Fox LLP, for the protester.

Maj. John C. Dohn, II, Department of the Army, for the agency.

Paul N. Wengert, Esq., Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest that an agency improperly decided to award only eight contracts, rather than nine, after concluding that eight awards would meet the agency's projected needs, and after identifying "natural breaks" between offerors' evaluated prices, is dismissed for failure to state a valid basis of protest where the solicitation provided only for multiple awards to the lowest-priced technically acceptable offerors, and did not set limits on the agency's judgment in deciding how many contracts to award.

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### **DECISION**

Cybermedia Technologies, Inc., doing business as CTEC, of Reston, Virginia, a small business, protests the award of contracts to eight firms<sup>1</sup> by the Department of the Army under request for proposals (RFP) No. W911S0-11-R-0011 for training services to support the distributed learning program at the Army Training and Doctrine Command schools. CTEC argues that the Army improperly awarded only eight contracts, and should have awarded a ninth contract to CTEC.

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<sup>1</sup> The eight awardees are The Cogar Group, LTD, of Burke, Virginia; KeyBridge Technologies, Inc., of Oklahoma City, Oklahoma; Craig Technical Consulting Inc., doing business as Craig Technologies, of Melbourne, Florida; Information Experts, Inc., of Reston, Virginia; Delan Associates, Inc., of Freeport, New York; Nangwik Services, LLC, of Jacksonville, Florida; The Angelo Group, Inc., of Martinez, Georgia; and Akima Infrastructure Services LLC, of Anchorage, Alaska.

We dismiss the protest because, as filed with our Office, it does not establish a valid basis for challenging the agency's action.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-57 (2006 & Supp. IV 2010). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Pacific Photocopy & Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. To achieve this end, our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f) (2011), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Id.

The RFP specified that the Army would make multiple awards to the lowest-priced technically acceptable offerors. After evaluating proposals, the Army identified at least 10 acceptable proposals, and ranked them in order of price, as follows:

<b>Offeror Name</b>	<b>Evaluated Price (millions)</b>
Cogar Group LTD	\$155.3
KeyBridge Technologies, Inc.	\$166.5
Craig Technologies	\$174.4
Information Experts, Inc.	\$202.4
Delan Associates, Inc.	\$222.0
Nangwik Services, LLC	\$245.0
Angelo Group, Inc.	\$257.4
Akima Infrastructure Services, LLC	\$262.5
CTEC	\$294.3
Offeror A	\$327.0

Protest attach. 1, CTEC Debriefing Slides, at 34; Protester's Opposition to Dismissal at 2.

The Army then looked for what it refers to as "natural breaks" (or gaps between offerors) in the evaluated prices. The Army considered that the expected workload would make six awards optimal, but that no significant gap in prices existed between the sixth, seventh, and eighth ranked offerors. On the other hand, the Army also determined that the administrative cost of making 10 awards would not be justified by any significant benefit. The Army then considered the gap of \$31.8 million between the evaluated price of the eighth offeror (Akima) and the ninth (CTEC), and

determined that the gap was significant. Based on that “natural break” in the prices, the Army determined to make eight awards. CTEC then filed this protest, arguing that the Army should have made a ninth award to CTEC, and that the Army’s use of “natural breaks” was an undisclosed and irrational evaluation method.

Our Office held a conference call with both parties, in which we questioned the validity of the protest. The Army then requested dismissal, arguing that the protest lacked a valid factual and legal basis. The Army argues that where a solicitation does not commit an agency to a specific number of contracts, and the agency has considered its needs, there is no legal basis to require an agency to make any particular number of awards, beyond the statutory preference for “multiple” awards. Army Dismissal Request at 3-4.

In response, CTEC argues that above all, agency decisions in a procurement must be reasonable, but the “natural breaks” method used by the Army was fundamentally arbitrary and thus had no rational basis. Protester’s Response at 4. CTEC notes that the Federal Acquisition Regulation instructs the Army that in making multiple awards, the agency “should consider” scope, complexity, duration, mix of resources, and ability to maintain competition for subsequent task or delivery orders. CTEC then argues that the judgments made by the Army did not consider these factors, and therefore were unreasonable. Id. at 5 (citing FAR § 16.504(c)(1)(ii)(A)).

Where multiple awards are contemplated by a solicitation, the agency is entitled to exercise sound business judgment consistent with the terms of the solicitation in determining how many awards should be made. Systems Research & Applications Corp., B-298107, B-298107.2, June 26, 2006, 2006 CPD ¶ 103 at 10 (protest denied where agency did not make additional award due to breakpoint between higher-ranked offerors and protester, even though agency made fewer awards than maximum listed in solicitation). Here, the RFP plainly specified that multiple awards would be made to the lowest-priced technically acceptable offerors, without specifying how many. The eight awards here met both of the RFP requirements: they were multiple, and they were to lower-priced technically acceptable offerors. Additionally, the record reflects that the Army considered its needs, the administrative costs associated with awarding additional contracts, and the existence of a \$31 million price difference between Akima and CTEC. Although CTEC insists that the establishment of a price breakpoint was arbitrary, CTEC has not meaningfully challenged the Army’s judgments that at least six contracts were needed, that eight awards would also meet the agency’s needs, and that the breaks between the sixth, seventh, and eighth offerors were smaller than the break between the eighth offeror and CTEC. Under the terms of this RFP, we see no basis for our Office to question the Army’s decisions.

In short, the allegations raised in this protest do not establish the likelihood that the agency violated applicable procurement laws or regulations. The protest therefore is dismissed without further action. See Bid Protest Regulations, 4 C.F.R. § 21.5(f).

The protest is dismissed.

Lynn H. Gibson  
General Counsel